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IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

JEFFERSON-PILOT LIFE INSURANCE COMPANY, INC.,
Petitioner,

v.

WILLARD WEEMS and JULIA WEEMS,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Alabama

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REPLY TO BRIEF IN OPPOSITION

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The Petition demonstrates that the Alabama Supreme Court overstepped its jurisdiction and reached conclusions that are indefensible as a matter of federal law in determining that Respondents are entitled to recover compensatory and punitive damages and to have their claims tried by a jury. In opposition, Respondents assert that the case is not "ripe" for review by this Court, that state courts have jurisdiction over the claims involved, that state and federal courts may award compensatory and punitive damages in the circumstances of this case, and that Respondents are entitled to trial by jury. None of these assertions has merit.

Certiorari should be granted and the decision below summarily reversed or, as Respondents acknowledge, this case should be held and disposed of in light of this Court's holding in *Varity Corp. v. Howe*, No. 94-1471 (U.S. *cert. granted* Apr. 24, 1995).

ARGUMENT

I

Respondents' argument that the case is not ripe for review lacks merit. While Respondents note that further proceedings might result in a judgment in Jefferson Pilot's favor (Brief in Opposition ("Opp.") at 6), that possible result is precisely why the decision of the Alabama Supreme Court should be reviewed at this stage. If Jefferson Pilot were to prevail on remand, the decision below—which presents important issues of federal law—would escape review altogether. As the Court has recognized, in this situation "a refusal immediately to review the state court decision might seriously erode federal policy." Thus, immediate review is appropriate. *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 483 (1975); *accord Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46, 54-55 (1989); *ASARCO Inc. v. Kadish*, 490 U.S. 605, 611-12 (1989); *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 178-79 (1988).

Prompt review of state court judgments is particularly appropriate where, as here, the very *jurisdiction* of the state tribunal is at issue. Thus, in *Construction Laborers v. Curry*, 371 U.S. 542 (1963), the state court had preliminarily enjoined a labor dispute that, petitioner argued and the Court agreed, was within the exclusive jurisdiction of the National Labor Relations Board ("NLRB"). As the Court noted:

> What we . . . have here is a judgment of the Georgia court finally and erroneously asserting its jurisdiction to deal with a controversy which is beyond its power

> and instead is within the exclusive domain of the NLRB.

371 U.S. at 548. So too in this case, the Alabama court is "finally and erroneously asserting its jurisdiction" over a matter that is "within the exclusive domain" of the federal courts. No one's interest would be served by participating in a jury trial where the court lacks jurisdiction.

II

The Petition parsed ERISA's provisions relating to jurisdiction and demonstrated that Respondents' claims are within the exclusive jurisdiction of the federal courts. Petition at 9-11. Respondents' Brief in Opposition merely cites § 502(a)(1)(B) of ERISA for the general proposition that "the Alabama Supreme Court, as a state court, does have concurrent subject matter jurisdiction of ERISA claims." Opp. at 7. There is no dispute that state courts have concurrent jurisdiction over § 502(a)(1)(B) claims, but that does not authorize such courts to assert jurisdiction over other ERISA claims. *See* 29 U.S.C. § 1132(e)(1).

In any event, *this* action is not cognizable under § 502(a)(1)(B); it does not involve interpretation of plan terms to determine benefits due thereunder. By their own characterization, Respondents' claims are for alleged breach of fiduciary duty and interference with ERISA-protected rights, neither of which can be asserted under § 502(a)(1)(B). *See* Opp. at 1. Rather, Respondents' claims may be brought, if at all, only under § 502(a)(3) and are thus within the exclusive jurisdiction of the federal courts. Respondents cannot, simply by invoking § 502(a)(1)(B), unilaterally bestow upon the state courts jurisdiction that Congress deliberately withheld.[1]

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[1] Respondents suggest that if the Alabama courts lacked jurisdiction over the ERISA claims, they were equally incompetent to rule that Respondents' state law claims were preempted. *See* Opp. at 7. This is clearly wrong. The assertion of state law claims in the

Nor, as Respondents suggest (Opp. at 7), can the state courts nullify Congress's grant of exclusive federal jurisdiction through the exercise of "pendent" or "ancillary" jurisdiction.[2]

III

The Petition summarizes this Court's jurisprudence relating to the civil enforcement provisions of ERISA. *See* Petition at 11-15. Those cases—*Massachusetts Mutual Life Insurance Co. v. Russell*, 473 U.S. 134 (1985), *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41 (1987), and *Mertens v. Hewitt Associates*, 113 S. Ct. 2063 (1993)—confirm that Respondents are not entitled to recover compensatory or punitive damages in this case. Against this consistent line of authority, Respondents raise only two district court decisions and a statement in a 1988 committee report (Opp. at 8-9), none of which raises a serious challenge to this Court's interpretation of ERISA.

The two district court cases—*East v. Long*, 785 F. Supp. 941 (N.D. Ala. 1992), and *International Union, United Automobile, Aerospace & Agricultural Implement Workers of America v. Midland Steel Products*, 771 F. Supp. 860 (N.D. Ohio 1991)—were wrong when they were decided. They, like the decision of the Alabama Supreme Court below, misinterpreted *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133 (1990), as effectively over-

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complaint gave the state court jurisdiction over those claims and allowed it to adjudicate the merits of Petitioner's preemption defense. Had the court held that such state claims were not preempted, its jurisdiction over them would have remained intact. Only upon ruling that the state claims were preempted did the state courts divest themselves of subject matter jurisdiction over the remaining exclusively federal claims. And, contrary to Respondents' implication, there is no bar to challenging a court's subject matter jurisdiction for the first time on appeal. *See* Petition at 5 n.4.

[2] Respondents cite Justice Shore's concurrence in *Ex Parte Gurganus*, 603 So. 2d 903 (Ala. 1993), but that opinion does not even mention pendent or ancillary jurisdiction.

ruling *Russell* and *Pilot Life*. *See* Petition at 13-14.[3] Even if there were some question about the continued viability of the *Russell/Pilot Life* principles when Respondents' cases were decided, which there was not, there certainly can be none today in light of *Mertens*.

Nor are the apparent views of a congressional committee in 1988 probative of the intent of Congress when ERISA was enacted in 1976.[4] This Court has recognized time and again that such post-enactment legislative history provides no insight into the intent of the enacting Congress. *E.g., Pension Benefit Guaranty Corp. v. LTV Corp.*, 496 U.S. 633, 650 (1990) ("[s]ubsequent legislative history is a 'hazardous basis for inferring the intent of an earlier Congress' ") (citing *United States v. Price*, 361 U.S. 304, 313 (1960)); *accord Universities Research Ass'n v. Coutu*, 450 U.S. 754, 778 (1981). The intent of Congress in 1976—explored in *Russell* and *Pilot Life* —controls.[5]

IV

Respondents' assertion that § 502(a)(1)(B) claims are legal and thus carry the right to trial by jury (Opp. at 9) is both irrelevant and wrong. As noted above, this case does not involve a § 502(a)(1)(B) claim. *See also*

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[3] In fact, *East v. Long* did not hold that extracontractual damages are available in these circumstances. Indeed, any such holding was clearly foreclosed by the Eleventh Circuit's contrary ruling in *McRae v. Seafarers' Welfare Plan*, 920 F.2d 819 (11th Cir. 1991).

[4] Respondents' reliance on this authority is misplaced for another reason: The report states that *federal* courts are to develop federal common law. It says nothing about *state* court authority.

[5] Congress well knows how to express any dissatisfaction with ERISA's enforcement scheme—by amending the statute. Indeed, in recent years, three paragraphs have been added to § 502(a). *See* Pub. L. No. 103-66, § 4301(c)(1), 107 Stat. 376 (1993) (adding paragraphs (7) and (8)); Pub. L. No. 103-401, § 2, 108 Stat. 4172 (1994) (adding paragraph (9)); *see also* Pub. L. No. 101-239, § 2101(b), 103 Stat. 2123 (1989) (expanding the scope of § 502(a)(6)).

Petition at 9-11. Moreover, even if it did, the overwhelming weight of authority, including *every* court of appeals that has reached the issue, holds that jury trials are *not* available under § 503(a)(1)(B). *See id.* at 16 n.20. Finally, it is clear that the legal relief Respondents seek here—compensatory and punitive damages—is not available to them in connection with the claims they have asserted.[6]

CONCLUSION

For the reasons stated herein and in the Petition, certiorari should be granted and this case should be summarily reversed. At the very least, as Respondents themselves recognize, this case should be held and disposed of in light of this Court's decision in *Varity Corp. v. Howe*, No. 94-1471.

Respectfully submitted,

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[6] The right to trial by jury guaranteed by the Alabama Constitution is no broader than it is under the Seventh Amendment. It too provides that "in those actions which are legal in nature as opposed to equitable, either party has a right to have its case heard and tried by a jury." Opp. at 9.